



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D-12018]

Proposed Exemption for Certain Prohibited Transaction

Restrictions Involving DWS Investment Management Americas, Inc. (DIMA or the Applicant) and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG (each a DB QPAM)

Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). If this proposed exemption is granted, certain entities with specified relationships to Deutsche Bank AG will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14.

DATES: If granted, this proposed exemption will be in effect for a period of three (3) years beginning on April 18, 2021. Written comments and requests for a public hearing on the proposed exemption should be submitted to

the Department by [INSERT DATE 37 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Suite 400, Washington, D.C. 20210, Attention: Application No. D-12018 or via private delivery service or courier to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, U.S. Department of Labor, 122 C St. N.W., Suite 400, Washington, D.C. 20001. Attention: Application No. D-12018. Interested persons may also submit comments and/or hearing requests to EBSA via email to e-OED@dol.gov or by FAX to (202) 693-8474, or online through <http://www.regulations.gov>. Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1515, 200 Constitution Avenue, N.W., Washington, D.C. 20210. See SUPPLEMENTARY INFORMATION below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Frank Gonzalez of the Department at (202) 693-8553. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments:

Comments should state the nature of the person's interest in the proposed exemption and the manner in which the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the Federal Register. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the

factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

WARNING: All comments received will be included in the public record without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the <http://www.regulations.gov> website is an "anonymous access" system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public record and made

available on the Internet.

Background:

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011).¹ If the proposed exemption is granted, certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank), including DWS Investment Management Americas Inc. (DIMA or the Applicant), and certain current and future affiliates of Deutsche Bank (each a DB QPAM) shall not be precluded from relying on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84-14 (PTE 84-14 or the QPAM Class Exemption), notwithstanding the 2017 criminal conviction of DB Group Services UK Limited (the U.S. Conviction), provided the conditions set forth in the exemption are met.² This proposed exemption, if granted, will be effective for a

¹ For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010), hereinafter referred to as "PTE 84-14" or the "QPAM Exemption."

period of three (3) years beginning on April 18, 2021, provided that the conditions, as set forth below in Section I are satisfied.

Summary of Facts and Representations³

Deutsche Bank

1. Deutsche Bank is a publicly-held global banking and financial services company headquartered in Frankfurt, Germany. Deutsche Bank, with and through its affiliates, subsidiaries, and branches, provides a wide range of services to corporations, institutions, governments, employee benefit plans, and private investors, among others.

2. Deutsche Bank's asset management affiliates that currently qualify as "qualified professional asset managers" (as defined in Section VI(a) of PTE 84-14),⁴ and that rely on the relief provided by PTE 84-14, are DIMA, a Delaware corporation; RREEF America L.L.C., a Delaware limited liability company; DWS Alternatives Global Limited, an entity based in London, United Kingdom; and DWS Investments Australia Limited, which is based in Sydney,

³ The Summary of Facts and Representations is based on the Applicant's representations, and does not reflect factual findings or opinions of the Department, unless indicated otherwise.

⁴ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

Australia (the DB QPAMs). The DB QPAMs' clients include plans that are subject to Part 4 of Title I of ERISA (ERISA Plans) or section 4975 of the Code (IRAs) with respect to which the DB QPAMs rely on PTE 84-14, or with respect to which the DB Affiliated QPAMs (or a Deutsche Bank affiliate) have expressly represented that the managers qualify as a QPAM or rely on the QPAM Exemption. The proposed exemption refers to these plans as Covered Plans. For purposes of this proposed exemption, a Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

Relevant ERISA Provisions and PTE 84-14

3. The rules set forth in section 406 of ERISA and section 4975(c)(1) of the Code proscribe certain "prohibited transactions" between plans and related parties with respect to those plans. Under ERISA, such parties are known as "parties in interest." Under section 3(14) of ERISA, parties in interest with respect to a plan include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan,

service providers with respect to the plan, and certain of their affiliates.⁵

4. The prohibited transaction provisions under section 406(a) of ERISA and 4975(c)(1) of the Code prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are plan assets), as well as the use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest.⁶ Under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department has the authority to grant exemptions from such "prohibited transactions" in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

5. PTE 84-14 reflects the Department's conclusion that it could provide broad relief from the prohibited transaction provisions of section 406(a) of ERISA and 4975(c)(1) of the Code, in the circumstances set forth in that exemption, only if the commitments and the investments of plan assets, and the negotiations leading thereto, are

⁵ Under the Code such parties, or similar parties, are referred to as "disqualified persons."

⁶ The prohibited transaction provisions also include certain fiduciary prohibited transactions under section 406(b) of ERISA and 4975(c)(1)(E) and (F) of the Code. These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries. PTE 84-14 provides only very narrow conditional relief for transactions described in Section 406(b) of ERISA.

the sole responsibility of an independent, discretionary manager.

6. Section I(g) of PTE 84-14 prevents an entity that may otherwise meet the definition of a QPAM from utilizing the exemptive relief provided by PTE 84-14, for itself and its client plans, if that entity or an "affiliate"⁷ thereof or any owner, direct or indirect, of a 5 percent or more interest in the QPAM has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in that section.

7. The inclusion of Section I(g) in PTE 84-14 is, in part, based on an expectation that QPAMs will maintain a high standard of integrity. This expectation extends not only to the QPAM itself, but also to those who may be in a position to influence the policies of the QPAM.

Prior Conviction and Related Exemptions

8. On October 11, 2011, DIMA first requested an administrative exemption from the Department (the First

⁷ Section VI(d) of PTE 84-14 defines the term "affiliate" for purposes of Section I(g) as "(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e) (2) (H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets."

Request) to allow certain DB QPAMs to continue utilizing the relief set forth in PTE 84-14, notwithstanding an impending criminal conviction of Deutsche Securities Korea Co. (DSK), a Deutsche Bank subsidiary based in the Republic of Korea (Korea), under Korean law for spot/futures-linked market price manipulation (the Korean Conviction).

9. While the Department was considering the First Request, DIMA submitted a second exemption application (the Second Request) to allow certain DB QPAMs to continue relying on PTE 84-14 for a period of 10 years, notwithstanding both the Korean Conviction, and the then-anticipated additional criminal conviction of DB Group Services UK Limited (DB Group Services), Deutsche Bank's indirect wholly-owned subsidiary based in London, United Kingdom, under U.S. law for one count of wire fraud in connection with its role in manipulating the United States Dollar (US Dollar) based London Interbank Offered Rate (LIBOR) (the U.S. Conviction).

10. On September 4, 2015, the Department published PTE 2015-15, in connection with the First Request, which provided temporary exemptive relief permitting DB QPAMs to continue relying on PTE 84-14 for a period of nine months, notwithstanding the Korean Conviction.⁸ PTE 2015-15 had an effective date of January, 25, 2016, which was the day on which the Korean court entered the Korean Conviction.

⁸ 80 FR 53574 (September 4, 2015).

11. On October 28, 2016, the Department granted PTE 2016-12, also in connection with the First Request, which extended the relief provided in PTE 2015-15.⁹ PTE 2016-12 had an effective date of October 24, 2016, and was scheduled to end on the earlier of April 23, 2017, or the effective date of the Department's final action in connection with the exemption request.

12. On December 22, 2016, the Department published PTE 2016-13, in connection with the Second Request, which granted temporary exemptive relief permitting DB QPAMs to rely on PTE 84-14 for a period of nine months, notwithstanding the Korean Conviction and the U.S. Conviction (collectively, the Convictions).¹⁰ PTE 2016-13 had an effective date of April 18, 2017, ending on the earlier of twelve months or the effective date of the Department's grant of permanent exemptive relief.

13. On December 29, 2017, the Department granted PTE 2017-04,¹¹ which provided temporary exemptive relief, permitting the DB QPAMs to continue to rely on PTE 84-14 for a period of three years beginning April 18, 2018, and ending on April 17, 2021, notwithstanding the Convictions.

⁹ 81 FR 75153 (October 28, 2016).

¹⁰ 81 FR 94028 (December 22, 2016).

¹¹ 82 FR 61840 (December 29, 2017).

Thereafter, on February 18, 2018, the Department issued certain technical corrections with respect to PTE 2017-04.¹²

14. On December 12, 2018, Korea's Seoul High Court for the 7th Criminal Division reversed the Seoul Central District Court's decision and declared the defendants not guilty. Korea's Seoul High Court's decision is currently under appellate review.

The Applicant's Third Exemption Request

15. On April 24, 2020, the Applicant submitted another prohibited transaction exemption application (the Third Request) seeking to extend the relief provided in PTE 2017-04, which expires on April 17, 2021, for an additional six years. The Applicant requested that the reversed Korean Conviction not be taken into consideration in enacting conditions for the Third Request.

16. According to the Applicant, since the granting of PTE 2017-04, the DB QPAMs have enhanced their policies and procedures, implemented numerous protocols to improve their compliance processes, and acted in accordance with a culture of regulatory compliance in the asset management business. The Applicant states that, if the extension of PTE 2017-04 is denied, the DB QPAMs may be effectively eliminated as asset managers for many ERISA-covered plans

¹² Unless otherwise noted, PTEs 2015-15, 2016-12, 2016-13, and 2017-04 are also referred to herein as the "Prior Exemptions."

and IRAs because they would be unable to provide the trading efficiencies and breadth of investment choices and potential counterparties afforded by the QPAM Exemption.

17. The Applicant states that the proposed exemption may prevent the following harms/costs to affected plans: loss of plans' preferred asset manager; fees incurred to search, hire and transition to a new private manager; and/or transaction costs relating to early liquidation of real estate and other investments.

18. The Department specifically requests that the Applicant provide information verifying the various potential costs and harms associated with denial of the exemption. In addition, the Department requests that the Applicant provide information on the size of any adverse impacts relative to the size of the affected portfolios; any costs or harms in excess of the normal transaction costs associated with changing asset managers; and the basis for concluding that any benefits to affected investors would be insufficient to offset any transaction costs or other adverse impacts flowing from denial of the exemption. The Department also specifically requests comments from the public, particularly including Covered Plans and IRA owners, on these same issues, including the magnitude of possible costs or harms, if any, that would stem from denial of the exemption, as well as the public's

views on whether the Department should deny the exemption, rather than adopt the proposal as set forth herein.

Applicant's Requested Modifications to PTE 2017-04: No More Audits

19. The Applicant requests that the DB QPAMs not be required to undergo further independent audits because: (a) the Independent Auditor determined that the DB QPAMs adhered to the conditions in the previously granted related exemptions; (b) the U.S. Conviction occurred outside of the DB QPAMs' operations, in an entity that is entirely separate from the asset management business; (c) the need for the current exemption rests on a single crime, and the exemption should be treated consistently with other similarly-situated applicants;¹³ (d) the Compliance Officer requirement that PTE 2017-04 imposed is a reasonable substitute for a full audit; and (e) elimination of the audit requirement would benefit Covered Plan participants because audits are expensive and require the expenditure of significant amounts of time by the asset managers' control functions.

20. Alternatively, in the event that the Department requires additional audits, the Applicant asks the

¹³ The Applicant cited the following individual exemptions: PTE 2017-03, JPMorgan Chase & Co., 82 FR 61816 (December 29, 2017); PTE 2017-05, Citigroup Inc., 82 FR 61816 (December 29, 2017); and PTE 2017-06, Barclays Capital Inc., 82 FR 61816 (December 29, 2017).

Department to impose an audit requirement every other year, as imposed on other applicants convicted of a single crime.

Department's Response: As noted by the Applicant, the Department has previously granted individual exemptions containing biennial audits, that permit asset managers to continue to rely on the relief provided by PTE 84-14, notwithstanding a single violation of Section I(g) of PTE 84-14. Those exemptions (the FX Exemptions) arose from judgments of convictions against JPMorgan Chase & Co., Citicorp and Barclays PLC, for violations of the Sherman Antitrust Act, 15 U.S.C. §1, for criminal misconduct affecting the Foreign Exchange (FX) Spot Market (the FX Convictions). The conditions in the FX Exemptions include a biennial audit.

21. In developing the FX Exemptions, the Department considered a variety of factors associated with the criminal misconduct that gave rise to the FX Convictions. In granting the FX Exemptions, the Department determined that a biennial audit, combined with the FX Exemptions' other protective conditions, provided adequate protection for affected Covered Plans.

22. With respect to this proposed exemption, the Department considered a variety of factors specific to this application. The scope and seriousness of the misconduct by the DB Group Services' traders (the Traders) was extensive and egregious. The Traders manipulated LIBOR,

which is a variable rate that is linked to the global derivatives market, which includes plan investors. According to the Statement of Facts filed in the U.S. Conviction, from approximately 2003 through at least 2010, the Traders defrauded their counterparties by secretly manipulating the LIBOR for the US Dollar, Yen, and Pound Sterling, as well as the EURIBOR (collectively, the IBORs). The Traders requested that the IBORs submitters that Deutsche Bank employed send IBORs that would benefit the traders' derivatives positions rather than accurate rates that comported with the definitional provisions governing IBORs. The Traders' misconduct affected the value, and cash flows, of derivatives contracts, including interest rate swap contracts.

23. The Department also notes that on January 8, 2021, Deutsche Bank entered into a deferred prosecution agreement with the U.S. Department of Justice. Deutsche Bank agreed to pay more than \$130 million to resolve the U.S. government's investigation into violations of the Foreign Corrupt Practices Act (FCPA) and a separate investigation into a commodities fraud scheme. The resolution includes criminal penalties of \$85,186,206, criminal disgorgement of \$681,480, victim compensation payments of \$1,223,738, and \$43,329,622 to be paid to the U.S. Securities & Exchange Commission. In the deferred prosecution agreement, Deutsche Bank admitted, accepted,

and acknowledged that, among other things, it was responsible under United States law for the acts of its officers, directors, employees, and agents, as charged. The charges stem from a scheme to conceal corrupt payments and bribes made to third-party intermediaries by making false entries on Deutsche Bank's books and records, as well as related internal accounting control violations, and a separate scheme to engage in fraudulent and manipulative commodities trading practices involving publicly-traded precious metals futures contracts. The FCPA misconduct occurred between 2009 and 2016, and the Commodities fraud misconduct occurred between 2009 and 2013.

24. After reviewing the record, including evidence of the magnitude, gravity, duration and pervasiveness of the LIBOR misconduct, the FCPA misconduct, and the commodities fraud misconduct, the Department believes that a three-year exemption with annual audits is appropriate. The Department further views it as appropriate to preclude relief to the extent that either: the DB QPAMs were involved in the conduct that gave rise to the deferred prosecution agreement; or Covered Plan assets were involved in the transactions that gave rise to the deferred prosecution agreement. A three-year exemption will enable the Department to review the DB QPAMs' ongoing compliance efforts after a reasonable period, and determine whether any adjustments are necessary to the conditions of this

exemption. The need for such ongoing review is amply supported by the seriousness of the misconduct cited above. In addition, however, the Department notes recent media reports concerning potential misconduct relating to the sale of a wide range of investment products, including hedges, swaps, and derivatives; a possible price-fixing conspiracy relating to Treasury securities; possible violations of the Markets in Financial Instruments Directive; and other matters.¹⁴ The Department requests comments from the Applicant and interested parties with information on these matters and their bearing on whether to grant the proposed exemption on the terms proposed.

Applicant's Requested Modification to PTE 2017-04: Removal of DSK and Revision of the Term "Convictions."

25. PTE 2017-04 provides relief for the U.S. Conviction and the Korean Conviction, using the defined term "Convictions."¹⁵ The Applicant notes that DSK's conviction in Korea was reversed, and requests that this

¹⁴ Dominic Lau, et al., *Deutsche Bank Probing Sales of Investment Banking Products*, BLOOMBERG.COM, <https://www.bloomberg.com/news/articles/2021-01-24/deutsche-bank-probes-misselling-of-investment-bank-products-ft> (last updated Jan. 25, 2021).

¹⁵ Specifically, Section II(a) of PTE 2017-04 defines the term "Convictions" to mean, in part: (1) the judgment of conviction against DB Group Services, in Case 3:15-cr-00062-RNC to be entered in the United States District Court for the District of Connecticut to a single count of wire fraud, in violation of 18 U.S.C. § 1343, and (2) the judgment of conviction against DSK entered on January 25, 2016, in Seoul Central District Court, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation.

proposed exemption redefine the term "Convictions" to reference only the U.S. Conviction. The Applicant further requests that the Department remove all references to "DSK" in the operative language of the proposed exemption.

Department's Response: The Department concurs with the Applicant's request.

26. Employees Covered by Sections I(a) and I(b).

Section I(a) of PTE 2017-04 provides, in pertinent part, that: "[t]he DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not know of, have reason to know of, or participate in the criminal conduct. . ." In addition, Section I(b) of PTE 2017-04 provides, in pertinent part, that: "[t]he DB QPAMs (including their officers, directors, and agents other than Deutsche Bank, and employees of such DB QPAMs). . ."

27. The Applicant requests that the Department add following language to Section I(a) after the words "such QPAMs:" "who had responsibility for, or exercised authority in connection with, the management of plan assets." The Applicant requests that the Department add the following language to Section I(b) after the words "such QPAMs:" "who had responsibility for, or exercised authority in connection with, the management of plan assets."

28. The Applicant notes that the above-described language is consistent with parallel provisions in some of the other individual exemptions previously granted by the Department that involve a single conviction.¹⁶

Department's Response: The Department is not persuaded that the conditions in this exemption should mirror the conditions in the exemptions cited by the Applicant. Each applicant for an exemption must demonstrate, and the Department must affirmatively find, on the record, that the requested relief is in the interest of, and protective of, affected plans and IRAs, and administratively feasible based on the specific record before it. In the Department's view, the original language of PTE 2017-04 remains appropriate as applied to the Applicant. The Department also notes in this connection that it will not automatically decline to impose a condition it believes appropriate for the protection of affected plans and IRAs merely because an earlier exemption does not contain that condition.

29. The conduct that is the subject of the exemptions cited by the Applicant, including the roles and corporate responsibilities of the persons who carried out that conduct, is materially different than, and distinguishable from, the conduct, including the roles

¹⁶ PTE 2017-03, 82 FR 61816 (December 29, 2017); PTE 2017-05, 82 FR 61816 (December 29, 2017); and PTE 2017-06, 82 FR 61816 (December 29, 2017).

and corporate responsibilities of the persons involved in the conduct that is the subject of this proposed exemption. The Applicant has not demonstrated that it would be in the interest of Covered Plans to grant relief that allows non-asset management personnel at a DB QPAM to have participated in the criminal conduct that gave rise to the U.S. Conviction. Finally, Section I(a) and (b) of this proposal are consistent with the Department's understanding of the record, which includes express representations made by the Applicant.

30. Training Conducted Electronically. Section I(h)(2) of PTE 2017-04 provides that: *"Each DB QPAM must develop and implement a program of training (the Training), to be conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel ... The training must: . . . (ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code."* The Applicant requests that the Department add the following language to the proposed exemption: *"[t]he Training may be conducted electronically or via website."*

Department's Response: Section I(h)(2) of this proposed exemption is consistent with the Applicant's request, which is particularly appropriate because of the ongoing pandemic.

31. Auditor's Failure to Comply. Section I(i)(11) of PTE 2017-04 provides that: *"The auditor must provide the Department, upon request, for inspection and review, access to all the work papers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law."* In addition, Section I(r) of PTE 2017-04 provides that: *"A DB QPAM will not fail to meet the terms of this exemption, solely because a different DB QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (o), and (q) if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates."*

32. The Applicant requests that relief to the DB QPAMs and the Covered Plans not be conditioned on the Independent Auditor's cooperation with the Department or disclosure of work papers because the DB QPAMs and the Covered Plans cannot control the Independent Auditor's actions.

Department's Response: The Department declines to make the Applicant's requested revisions. The Department expects the DB QPAMs and the Independent Auditor to make every effort to ensure that their respective responsibilities under the exemption are fulfilled, and to

contact the Office of Exemption Determinations in a timely manner any time guidance is needed.

33. Modification of Notice Requirements. PTE 2017-04 requires that various notifications be given to Covered Plan clients, such as a notice of clients' right to receive summary policies. The Applicant requests that this proposed exemption not require current Covered Plan clients to receive notifications that they previously received pursuant to PTE 2017-04.

Department's Response: Section I(j)(7) of this proposal is consistent with the Applicant's request.

34. Miscellaneous Provisions. The Applicant requests to modify the term "General Counsel" as referred to in PTE 2017-04, and changing such term to "general counsel" since it is not a defined term.

Department's Response: This proposed exemption uses the term "the QPAM's general counsel" to clarify relevant provisions of the proposed exemption.

35. Lastly, the Applicant requests adding the phrase "or modifying" to the definition of Covered Plan in Section II(b) of PTE 2017-04, to clarify that a disclaimer may be made in a modification of a contract, arrangement, or agreement with a Covered Plan. The definition, once modified, would read, in pertinent part: *"A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM*

status or PTE 84-14 in entering into or modifying its contract, arrangement, or agreement with the ERISA-covered plan or IRA."

Department's Response: The Department declines to make the requested revision. The Applicant has not demonstrated that each of the DB QPAM's processes for modifying its contracts, arrangements or agreements with Covered Plans would alert and inform a Covered Plan fiduciary to the same extent as an express disclaimer set forth in a Covered Plan's initial contract, arrangement or agreement with a DB QPAM.

Statutory Findings

36. Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries.

a. "Administratively Feasible." The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform an in-depth audit covering, among other things, each DB QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department

and available to the public. The independent audit will provide an incentive for, and a measure of, compliance, while reducing the immediate need for review and oversight by the Department.

b. "In the interest of." The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan. It is the Department's understanding, based on representations from the Applicant, that if the requested exemption is denied, Covered Plans may be unable to maintain their investment strategy with their current asset manager, and may be subject to disruptions and costs associated with changing asset managers. The DB QPAMS claim that their ERISA plan clients have long availed themselves of the benefit of the DB QPAMS' investment expertise, even after the grant of PTE 2017-04. As noted above, however, the Department specifically requests commenters, including Covered Plans and IRA owners, comment on the magnitude of costs or harms, if any, that would stem from denial of the Exemption.

37. The DB QPAMS state that granting the exemption would enable the DB QPAMS to continue to effect a wide range of beneficial transactions on their ERISA clients' behalf without undue administrative delay, or other conditions or limitations that could be disadvantageous

to the ERISA plan clients. The Applicant represents that without the ability to serve as QPAMs, certain prudent and appropriate investment opportunities may not be available to the ERISA plan clients of Deutsche Bank asset managers. Here too, the Department specifically requests comments from Covered Plans and IRAs as to the specific costs or harms, if any, that would flow from denial of the exemption, including evidence as to any valuable investment opportunities that plans would have to forego, and the basis for concluding that those investments would no longer be available to plans on advantageous terms.

38. The Applicant states that PTE 84-14 is one of the most commonly used prohibited transaction exemptions and, for some transactions, may be the only available exemption. If the requested exemption were not granted, ERISA plan clients could be effectively prohibited from entering into certain transactions, either because no other exemption is available or the counterparty is not willing to enter into the transaction without the protections provided by PTE 84-14. The Applicant claims that the loss of the ability to use PTE 84-14 could significantly delay or even make impossible transactions that would be beneficial for the ERISA plans.¹⁷

¹⁷ As noted in the text, the Department specifically requests comments on the scope and magnitude of alleged negative impacts, including any

39. The Applicant represents that Covered Plan fiduciaries expend significant resources, including time and money, in selecting asset managers for their plans. Forcing Plan fiduciaries to terminate their chosen managers—because the managers are unable to rely on PTE 84-14's relief will cause plans to incur a number of additional costs. The following costs are in addition to the opportunity costs of investing in cash pending reinvestment with a new manager; terminating such management services may result in the following specific harm to the relevant ERISA plan: loss of the investor's preferred manager, loss of leading investment manager/performance, consulting fees, time loss in evaluating alternative investment managers, legal fees, transaction costs for direct real estate early liquidation, costs for non-direct real estate liquidation, and legal costs for new trading agreements. If the extension of PTE 2017-04 were to be denied, then the DB QPAMs may be effectively eliminated as asset managers for many Covered Plans because they would be unable to provide the trading efficiencies, breadth of investment choices, and potential counterparties afforded by the QPAM Exemption. The Department specifically seeks comments from Covered Plans and IRAs, as well as the Applicant, on the validity of

increased costs, which Covered Plans and IRAs would sustain if the Department were to deny the exemption.

these concerns and the magnitude of the associated costs and harms, if any, should the Department decline to grant the requested exemption.

c. "Protective of." The Department has tentatively determined that this proposed exemption, if granted, is protective of Covered Plans. The proposal has a limited term of three years, and has similar conditions to PTE 2017-04. However, the Department has determined to revise certain of those conditions so that it can make its required finding that the proposed three-year exemption will be protective of the rights of participants and beneficiaries of Covered Plans. For example, this proposed exemption clarifies that the term "participate in," as referenced below, refers not only to active participation in the criminal conduct that is the subject of the U.S. Conviction, but also to knowing approval of the criminal conduct that is the subject of the U.S. Conviction, or knowledge of the conduct without taking active steps to prohibit the conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors.

40. Several of this proposed exemption's conditions are aimed at ensuring that the DB QPAMs were not involved in the conduct that gave rise to the U.S. Conviction. Accordingly, the proposal generally precludes relief to the extent the DB QPAMs were aware of, participated in,

approved of, furthered, benefitted, or profited from, the conduct that gave rise to the U.S. Conviction.¹⁸ Further, the DB QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable to the U.S. Conviction.

41. The proposal further provides that no DB QPAM will use its authority or influence to direct an "investment fund" that is subject to ERISA or the Code and managed by such DB QPAM with respect to one of more Covered Plans, to enter into any transaction with DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

42. If granted, the exemption will terminate if Deutsche Bank or any of its affiliates are convicted of any additional crimes described in Section I(g) of PTE 84-14, or if any of the other conditions of PTE 84-14 have not been met. Also, with limited exceptions, DB Group Services will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets, except DB Group Services may act as such a

¹⁸ For clarity, references to the DB QPAMs include any individual employed by or engaged to work on behalf of these QPAMs during or after the period of misconduct.

fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an affiliate.

43. The proposal requires each DB QPAM to update, implement and follow certain written policies and procedures (the Policies). These Policies are similar to the policies and procedures mandated by PTE 2017-04. In general terms, the Policies must require, and must be reasonably designed to ensure that, among other things: the asset management decisions of the DB QPAMs are conducted independently of the corporate management and business activities of DB Group Services; the DB QPAMs fully comply with ERISA's fiduciary duties, as applicable, and with ERISA and the Code's prohibited transaction provisions, as applicable; the DB QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; any filings or statements made by the DB QPAMs to regulators, on behalf of or in relation to Covered Plans, are materially accurate and complete; the DB QPAMs do not make material misrepresentations or omit material information in communications with such regulators with respect to Covered Plans; the DB QPAMs do not make material misrepresentations or omit material information in communications with Covered Plans; the DB QPAMs comply with the terms of the exemption; and any violation of, or failure to comply with any of these items, is corrected as soon as reasonably possible

upon discovery, or as soon after the DB QPAM reasonably should have known of the noncompliance (whichever is earlier). Any such violation or compliance failure not so corrected must be reported, upon the discovery of such failure to so correct, in writing, to appropriate corporate officers, the head of compliance and the QPAM's general counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies.

44. This proposal mandates training (Training), which is similar to the training required under PTE 2017-04. In this regard, all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must, at a minimum, cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code.

45. Under this proposal, as in PTE 2017-04, each DB QPAM must submit to an annual audit conducted by an independent auditor. Among other things, the auditor must

test a sample of each DB QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

46. The Audit Report must be certified by the respective DB QPAM's general counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Audit Committee of Deutsche Bank's Supervisory Board. A senior executive officer, who has a direct reporting line to Deutsche Bank's highest ranking legal compliance officer, must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must notify the Department in the event of a change in the committee to which the Audit Report will be provided.

47. This proposal requires that, throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan, the DB QPAM must agree and warrant: (i) to comply with ERISA and the Code, as applicable with respect to such

Covered Plan; and (ii) to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions). The DB QPAMs must further agree and warrant to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such ERISA-covered plan. Each DB QPAM must also agree and warrant to indemnify and hold harmless such Covered Plan for any actual losses resulting directly from any of the following: (a) a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and/or the prohibited transaction provisions of ERISA and the Code, as applicable; (b) a breach of contract by the DB QPAM; or (c) any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the Conviction. This condition applies only to actual losses caused by the DB QPAM. The Department views actual losses arising from unwinding transactions with third parties, and from transitioning Covered Plan assets to third parties, to be "direct" results of violating the terms of this provision.

48. This proposed exemption contains specific notice requirements. Each DB QPAM must provide a notice regarding the proposed three-year exemption, along with a separate summary describing the facts that led to the Conviction

(the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. The clients must receive a Federal Register copy of the notice of final three-year exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email that has a link to this three-year exemption).

49. The proposal requires that each DB QPAM maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption. The proposal mandates that DB continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an

exemption review (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line to the highest ranking corporate officer in charge of compliance for the applicable DB QPAM. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the DB QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the DB QPAMs.

50. The Compliance Officer must prepare a written report (an Exemption Report) that summarizes his or her material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to his or her knowledge the report is accurate and note whether the DB QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

51. The Exemption Report must be provided to the appropriate corporate officers of Deutsche Bank and each DB

QPAM to which such report relates and to the head of compliance and the QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM. The Exemption Report must be made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

52. Deutsche Bank must also immediately disclose to the Department any deferred prosecution agreement or non-prosecution agreement with the U.S. Department of Justice, entered into by DB or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA. Deutsche Bank must also immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement.

53. The proposal mandates that, among other things, each DB QPAM clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the DB QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months

following the end of the calendar year during which the Policies were changed.¹⁹ With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

54. The proposal requires that DB QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the U.S. Conviction. If, during the Exemption Period, an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84-14, (other than the U.S. Conviction), as referenced in Section I(g) of PTE 84-14, relief in this proposed exemption would terminate immediately.

Department's Notes: This proposed three-year exemption provides relief from certain of the restrictions set forth in sections 406 and 407 of ERISA. No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed three-year exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate

¹⁹ In the event Applicant meets this disclosure requirement through Summary Policies, changes to the Policies do not result in a requirement of a new disclosure unless the Summary Policies are no longer accurate because of the changes.

structure is convicted of any crime covered by Section I(g) of PTE 84-14 (other than the U.S. Conviction) during the effective period of the proposed three-year exemption. While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to grant a requested exemption.

55. When interpreting and implementing this exemption, the Applicant and the DB QPAMs should resolve any ambiguities in light of the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations, at 202-693-8540.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within seven days of the publication of the notice of proposed exemption in the Federal Register. The notice will contain a copy of the notice of proposed exemption, as published in the Federal Register, and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on the pending exemption. All Written comments are due within thirty seven (37) days of the publication of the notice of

proposed exemption in the Federal Register. All comments will be made available to the public.

WARNING: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the

participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

PROPOSED EXEMPTION

The Department is considering granting a five-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c) (2) of the Internal Revenue Code (or Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).²⁰ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

SECTION I. COVERED TRANSACTIONS

The DB QPAMs, as further defined in Section II(c), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-14),²¹ notwithstanding the "U.S. Conviction" against DB Group Services (as further defined in Section II(a)),

²⁰ For purposes of this proposed five-year exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

²¹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

during the Exemption Period, provided that the following conditions are satisfied:²²

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DB Group Services that is the subject of the U.S. Conviction. For purposes of this exemption, "participate in" or "participated in" refers not only to active participation in the criminal conduct that is the subject of the U.S. Conviction, but also to knowing approval of the criminal conduct that is the subject of the U.S. Conviction, or knowledge of the conduct without taking active steps to prohibit the conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors;

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the U.S. Conviction.

²² Section I(g) of PTE 84-14 generally provides relief only if "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including fraud.

(c) The DB QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that "participated in" the criminal conduct that is the subject of the U.S. Conviction;

(d) At all times during the Exemption Period, no DB QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such DB QPAM with respect to one or more Covered Plan (as defined in Section II(b), to enter into any transaction with DB Group Services, or to engage DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction, or service, may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the U.S. Conviction;

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew, or should have known, would: further the criminal conduct that is the subject of the U.S. Conviction; or cause the DB QPAM or its affiliates to directly, or indirectly, profit from the criminal conduct that is the subject of the U.S. Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DB Group Services will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, DB Group Services will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA, or section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be double-hatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(h)(1) Each DB QPAM must continue to maintain, adjust (to the extent necessary), implement and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of DB Group Services;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, in each such case as applicable with respect to each Covered Plan, and does not knowingly

participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the DB QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The DB QPAM complies with the terms of this exemption; and

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (h)(1)(vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is

reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each DB QPAM must maintain, adjust (to the extent necessary) and implement a program of training (the Training), to be conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code; and

(iii) Be conducted in-person, electronically or via a website;

(i) (1) Each DB QPAM submits to three audits conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover a 12 month period that begins on April 18, 2021 and ends on April 17, 2022. The second and third audits must cover the 12 month period that begins on April 18, 2022, and April 18, 2023, respectively. Each of the three annual audits must be completed no later than six (6) months after the corresponding audit's ending period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not

limited to: its computer systems; business records; transactional data; workplace locations; Training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank, and the DB QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated

Audit Report that covers all the DB QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each DB QPAM's Policies and Training; each DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described above. The DB QPAM must promptly address any noncompliance. The DB QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective QPAM. Any action taken or the plan of action to be taken by the DB QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in

substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a DB QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i) (3) and (4) above;

(ii) The adequacy of the most recent Exemption Review described in Section I(m);

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the DB QPAM's general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such

officer's knowledge at the time, the such DB QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department in the event of a switch in the committee to which the Audit Report will be provided;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C Street, NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than forty-five (45) days

following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) Deutsche Bank must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an accurate explanation of the basis for the substitution or change including an accurate description of any material disputes between the terminated auditor and Deutsche Bank or any of its affiliates;

(j) As of April 18, 2021, with respect to any arrangement, agreement, or contract between a DB QPAM and a

Covered Plan, the DB QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the U.S. Conviction. This condition applies only to actual losses caused by the DB QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB

QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017-04, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that

such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank, and its affiliates, or damages arising from acts outside the control of the DB QPAM; and

(7) By August 18, 2021, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a DB QPAM on or after April 18, 2021, the DB QPAM must agree to its obligations under this section I(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. Notwithstanding the above, a DB QPAM will not violate the condition solely because a Covered Plan or IRA refuses to sign an updated investment management agreement. This condition will be deemed met for each Covered Plan that received notice pursuant to PTE 2017-04 that meets the terms of this condition.

(k) Each DB QPAM provides a notice regarding the proposed exemption, along with a separate summary describing the facts that led to the U.S. Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the U.S. Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. The clients must receive a Federal Register copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email that has a link to this exemption);

(l) The DB QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the U.S. Conviction;

(m) (1) Deutsche Bank continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training

requirements described herein. The Compliance Officer must conduct an annual review for each twelve month period, beginning on April 18, 2021, (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of legal compliance for asset management;

(2) With respect to each Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the DB QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017-04; any material change in the relevant business activities of the DB QPAMs; and any change to ERISA, the Code, or regulations

related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;

(ii) The Compliance Officer prepares a written report for each Exemption Review (each, an Exemption Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Exemption Report; and (D) the DB QPAMs have complied with the Policies and Training, and/or

corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) Each Exemption Report must be provided to appropriate corporate officers of Deutsche Bank and to each DB QPAM to which such report relates, and to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM; and the Exemption Report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates. The Exemption Review for the period April 18, 2020 through April 17, 2021 must be conducted, and completed, under the requirements of PTE 2017-04;

(n) In connection with the deferred prosecution agreement entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice, to resolve the U.S. government's investigation into violations of the Foreign Corrupt Practices Act and a separate investigation into a commodities fraud scheme, no DB QPAMs were involved in the conduct that gave rise to the deferred prosecution agreement, and no Covered Plan assets were involved in the transactions that gave rise to the deferred prosecution agreement;

(o) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief in the exemption;

(p) During the Exemption Period, Deutsche Bank: (1) immediately discloses to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice entered into by Deutsche Bank or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(q) Each DB QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the DB QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar

year during which the Policies were changed.²³ With respect to this requirement, the description may be continuously maintained on a website, provided that such website links to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(r) A DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (o) and (q) or, if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates.

SECTION II. DEFINITIONS

(a) The term "U.S. Conviction" means the judgment of conviction against DB Group Services UK Limited (DB Group Services), entered on April 18, 2017, by the United States District Court for the District of Connecticut, in case number 3:15-cr-00062-RNC, for one (1) count of wire fraud, in violation of 18 U.S.C. § 1343. For all purposes under this exemption, "conduct" of any person or entity that is

²³ In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

the "subject of [a] Conviction" encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in case number 3:15-cr-00062-RNC.

(b) The term "Covered Plan" means a plan subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term "DB QPAM" or "DB QPAMs" means DWS Investment Management Americas, Inc., and any certain current, and future, Deutsche Bank's asset management affiliates that qualify as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14),²⁴ and that rely on the relief provided by PTE 84-14, and with

²⁴ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

respect to which Deutsche Bank is an "affiliate" (as defined in section VI(d)(1) of PTE 84-14). The term "DB QPAM" excludes DB Group Services.

(d) The term "Deutsche Bank" means Deutsche Bank AG, a publicly-held global banking and financial services company headquartered in Frankfurt, Germany;

(e) The term "Exemption Period" means the three year period from April 18, 2021 and ending on April 17, 2024;

(f) The term "Plea Agreement" means the Plea Agreement entered into between DB Group Services and the U.S. Department of Justice, Fraud Section, Criminal Division, on April 23, 2015 in connection with Case Number 3:15-cr-00062-RNC filed in the U.S. District Court for the District of Connecticut, subsequently adjudged by the Court on March 28, 2017.

EFFECTIVE DATE: This exemption will be in effect for three years, beginning on April 18, 2021.

Signed at Washington, DC, this 8th day of February, 2021.

Christopher Motta,
Chief, Division of Individual
Exemptions,
Office of Exemption
Determinations,
Employee Benefits Security
Administration,
U.S. Department of Labor.

[FR Doc. 2021-02886 Filed: 2/11/2021 8:45 am; Publication Date: 2/12/2021]